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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,314	05/20/2008	Dietmar Koch	LIP085	2608
32047 7590 06/07/2011 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERICAL STREET MANCHESTER, NH 03101			EXAMINER PHILLIPS, GEORGE N	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 06/07/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,314	Applicant(s) KOCH, DIETMAR	
	Examiner GEORGE N. PHILLIPS	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/24/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/9/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims **9-10 and 13-14** are objected to because of the following informalities:
“one of claim 5” in claim 9, line 1 appears to be in error for --claim 5--, “one of claim 1” in claim 10, line 1 and claim 14, line 1 appears to be in error for --claim 1--, “one of claim 10” in claim 13, line 1 appears to be in error for --claim 10--. Appropriate corrections are required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims **1 and 3-14** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim **1** recites the limitation "one of which each acts on one of the first arms" in lines 7-8. This limitation is vague and indefinite because it is unclear whether only one of the second arms or each of the second arms is acting on one of the first arms.
4. Claim **13** recites the limitation “the spindle” in line 3. There is insufficient antecedent basis for this limitation in the claim.
5. Claims **3-14** are rejected as dependent on claim 1, or a claim that depends on claim 1, thus contain the defect noted above.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims **1, 3-4, 10-12, and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang, U.S. 6,364,850 in view of Huang, U.S. 2002/0193712.

4. In re claim **1**, Wang teaches a massage device (reading on massage carriage) for use in a chair or similar that can be moved back and forth along a frame in the chair or similar, comprising a device that contains at least one motor and gearing parts, a first shaft (51) that can be moved by the drive, a second shaft (52) that can be moved by the drive, two first arms (61) (see figure 4, both arms are labeled "61" but one is on the left side and the other is on the right side), which are connected to the first shaft (51), can be moved by the first shaft (51) and on each of which a massage element (63) is mounted, and two second arms (62), which are connected to the second shaft (52) and can be moved by the second shaft (52), each of which acts on one of the first arms (61)

such that the massage elements (63) can be moved by the drive with one movement component oriented parallel to the frame and one movement perpendicular to the frame (**see figure 4**). Further, Wang teaches a motor (not shown) with a motor shaft (42) where the motor shaft displays two shaft sections where the first shaft (51) can be moved by means of the one shaft section via a reduction gear (54) and the second shaft (52) by means of the other shaft section via a reduction gear (74) (**see figure 5**). However, Wang does not teach the drive displaying a single motor with a motor shaft characterized in that the motor shaft displays two shaft sections arranged on opposite face ends of the motor and lying on one axis. Huang teaches a drive displaying a single motor (30) with a motor shaft (34) characterized in that the motor shaft displays two shaft sections arranged on opposite face ends of the motor and lying on one axis (**see figure 4**). It would have been obvious to one of ordinary skill in the art to use Huang's motor and shaft arrangement, having the motor in the middle with the two shaft sections arranged on opposite face ends of the motor and lying on one axis, instead of Wang's motor and shaft arrangement in order to fit a massaging unit inside a housing as taught by Huang in paragraph 20.

5. In re claim **3**, Wang in view of Huang teaches the invention as claimed and as described above. Wang further teaches that the shaft sections (one section around reduction gear 54 and the other section around reduction gear 74) are sections of a continuous motor shaft (42) (**see figure 5**).

6. In re claim **4**, Wang in view of Huang teaches the invention as claimed and as described above. Wang further teaches that the reduction gear (73) via which the

second shaft (52) can be moved displays a free-wheel device in a particular sense of rotation of the motor shaft (41) (**see figure 5**).

7. In re claim **10**, Wang in view of Huang teaches the invention as claimed and as described above. Wang further teaches that the drive displays a housing comprising two shells (31) (**see figure 5**).

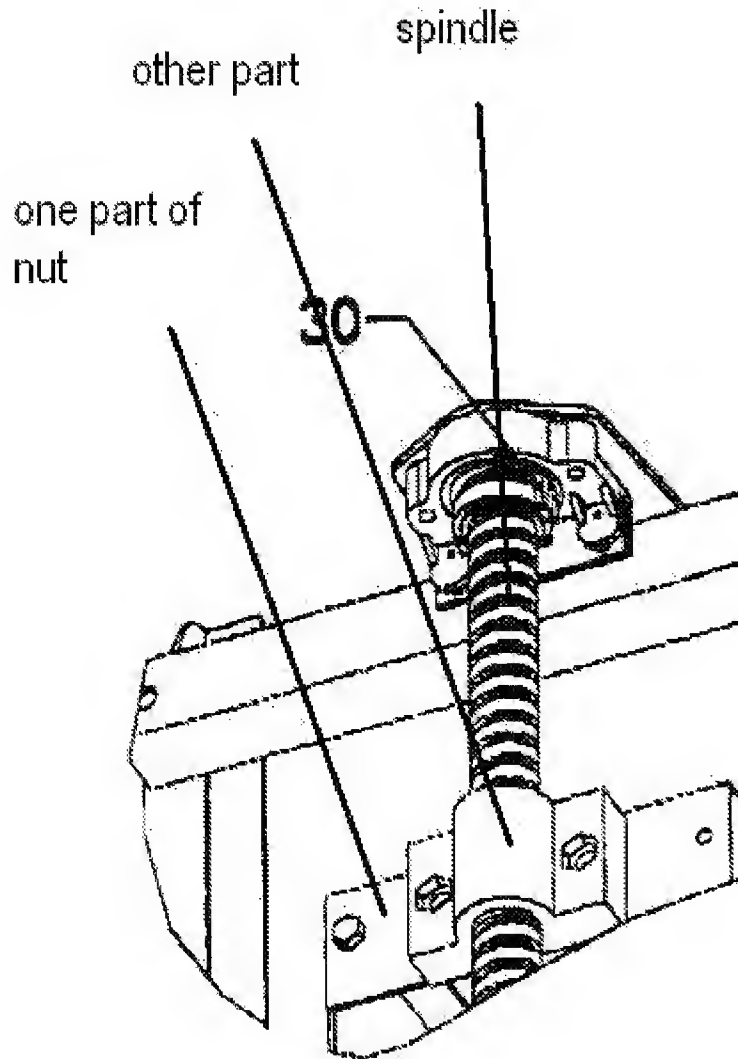
8. In re claim **11**, Wang in view of Huang teaches the invention as claimed and as described above. Wang further teaches that the bearing arrangement for the gearing parts is integrated in the housing in one piece. However, Wang does not teach that the bearing for the motor is integrated in the housing. Huang teaches that the bearing for the motor (30) is inside the housing (12) which is constructed from two parts (18 and 20). It would have been obvious to one of ordinary skill in the art to incorporate Huang's bearings for the motor with Wang as modified by Huang because Wang as modified by Huang already uses a motor in the middle of the two reduction gears and inside the housing as discussed above in claim 1.

9. In re claim **12**, Wang in view of Huang teaches the invention as claimed and as described above. However, Wang does not teach that the housing shells and the bearing arrangement for the motor and the gearing parts are made of plastic, injection-molded in one piece. Huang teaches that the housing shells and the bearing arrangement for the motor and gearing parts are made of plastic, injection molded in one piece (**see paragraph 17**). It would have been obvious to one of ordinary skill in the art to use Huang's housing with Wang's massage device in order to have a light weight device as taught by Wang in column 17.

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10. In re claim **14**, Wang in view of Huang teaches the invention as claimed and as described above. Wang further teaches that the two reduction gears (54 and 74) are designed as worm gears.

11. Claim **13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Huang, and further in view of Canto, U.S. 6,443,917. Wang in view of Huang teaches the invention as claimed and as described above. However, Wang in view of Huang does not teach one part of a nut integrally molded on the housing and interacts with the spindle of a linear drive unit located on the frame for moving the massage carriage along the frame, where the other part of the nut can be fastened to the one part from the outside such that the spindle can be accommodated between the two parts. Canto teaches one part of a nut integrally molded on the housing and interacts with the spindle of a linear drive unit located on the frame for moving the massage carriage along the frame, where the other part of the nut can be fastened to the one part from the outside such that the spindle can be accommodated between the two parts (**see labeled figure 16 below**). It would have been obvious to one of ordinary skill in the art to combine Canto's nut and spindle with Wang's vibration device as modified by Huang in order to allow for vertical displacement of the device within the chair as taught by Canto in column 9, lines 32-36.



12. Claims **5-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Huang, and further in view of Chen, U.S. 6,099,487.

13. In re claim **5**, Wang in view of Huang teaches the invention as claimed and as described above. However, Wang in view of Huang does not teach that one of the shaft sections can be permanently driven by the motor and the other shaft section can be disconnected from the motor by means of a clutch. Chen teaches a shaft (20) where

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one of the shaft sections can be permanently driven by the motor (not shown) and the other shaft section can be disconnected from the motor by means of a clutch (33) (**see figure 4**). It would have been obvious to one of ordinary skill in the art to use Chen's clutch with Wang's massage device as modified by Huang in order to control the independent driving of the gears and independently control kneading and bearing as taught by Chen in column 4, lines 63-65.

14. In re claim 6, Wang in view of Huang in view of Chen teaches the invention as claimed and as described above. However, Wang in view of Huang in view of Chen does not teach an electromagnetic clutch. Chen teaches that the clutch is made of rods controlled by a conventional electromagnetic mechanism (**see column 4, lines 31-32**). It would have been obvious to one of ordinary skill in the art to use Chen's clutch with Wang's massage device as modified by Huang for the same reason as stated above in claim 5.

15. In re claim 7, Wang in view of Huang in view of Chen teaches the invention as claimed and as described above. However, Wang in view of Huang in view of Chen does not teach an automatic brake by means of which the disconnectable shaft section can be braked or blocked in a disconnected state. Chen teaches a clutch with an end gear (35) (reading on automatic break) by means of which the end gear can be retracted from the face gears (31 or 32) and stop the rotation to produce the massage function (**see figure 4 and column 4, lines 42-45**). It would have been obvious to one of ordinary skill in the art to use Chen's clutch with Wang's massage device as modified by Huang for the same reason as stated above in claim 5.

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16. In re claim **8**, Wang in view of Huang in view of Chen teaches the invention as claimed and as described above. However, Wang in view of Huang in view of Chen does not teach that the disconnectable shaft section can be braked or blocked by an integrated spring mechanism. Chen teaches a clutch with an integrated compression spring (40) (reading on spring mechanism) that when compressed causes the end gear (35) (reading on automatic brake) to no longer engage the face gears and causes the disconnectable shaft section to be braked or blocked (**see figure 4 and column 4, lines 42-45**). It would have been obvious to one of ordinary skill in the art to use Chen's clutch with Wang's massage device as modified by Huang for the same reason as stated above in claim 5.

17. In re claim **9**, Wang in view of Huang in view of Chen teaches the invention as claimed and as described above. Wang further teaches that the reduction gear (73) via which the second shaft (52) can be moved displays a free-wheel device in a particular sense of rotation of the shaft section (near reduction gear 73) that can be permanently driven by the motor (not shown) (**see figure 5**).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE N. PHILLIPS whose telephone number is (571)270-7651. The examiner can normally be reached on Monday-Thursday, 8 AM-5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G.P./

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772